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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,879	08/18/2003	David Morrow	WLI 1063 PUS	3318

7590

08/02/2004

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EXAMINER

CHAMBERS, MICHAEL S

ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/642,879

Applicant(s)

MORROW ET AL.

Examiner

Mike Chambers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 9-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

Group I- Lacrosse sticks as shown in Fig 1-4.

Group II- Lacrosse sticks as shown in Fig 5-6.

Group III- Lacrosse sticks as shown in Fig 7-8 .

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

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showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant's representative J. Artz was contacted by phone on 7/21/04.

Applicant's representative has chosen not to elect at this time which resulted in the mailing of this Office action. Applicant's representative elected Group I.

Claims 9-15 are withdrawn from further consideration, as directed to claims non-elected without traverse, 37CFR1.142.

Claim Objections

Claim 1 is objected to because of the following informalities:

In line 9: "long" should be – along –.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuebler et al. Kuebler et al discloses

a hollow tube having an interior surface and an exterior surface, said hollow tube has a first thickness defined by a distance between said interior surface and said exterior surface at a first location along said hollow metal tube and a second thickness defined by a distance between said interior surface and said exterior thickness at a second location along said hollow metal tube; wherein said first thickness has a greater magnitude than said second thickness (fig 3).

As to claims 2 and 8 : Kuebler et al discloses a metal material (2:30).

As to claim 3 : Kuebler et al discloses a top and bottom portion (fig 3).

As to claim 4 : Kuebler et al discloses a top portion with a first thickness substantially uniform (fig 3, Top portion is considered the top of the center strut).

As to claim 5 : Kuebler et al discloses a bottom portion with a first thickness substantially uniform (fig 3, Bottom portion is considered the bottom of the center strut).

Also,

Claims 1 - 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Brine et al. Brine et al discloses

a hollow tube having an interior surface and an exterior surface, said hollow tube has a first thickness defined by a distance between said interior surface and said exterior surface at a first location along said hollow metal tube and a second thickness defined by a distance between said interior surface and said exterior thickness at a

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second location along said hollow metal tube; wherein said first thickness has a greater magnitude than said second thickness (fig 2b).

As to claims 2 and 8 : Brine et al discloses a metal material (3:57-66).

As to claim 3 : Brine et al discloses a top and bottom portion (fig 2b).

As to claim 4 : Brine et al discloses a top portion with a first thickness substantially uniform (fig 2, 2b).

As to claim 5 : Brine et al discloses a bottom portion with a first thickness substantially uniform (fig 2, 2b).

As to claim 6 : Brine et al discloses a taper (2:35-37,2:44-45).

As to claim 7 : Brine et al discloses an extrusion process (3:60-66).

Also,

Claims 1 - 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Tucker.

Tucker discloses

a hollow tube having an interior surface and an exterior surface, said hollow tube has a first thickness defined by a distance between said interior surface and said exterior surface at a first location along said hollow metal tube and a second thickness defined by a distance between said interior surface and said exterior thickness at a second location along said hollow metal tube; wherein said first thickness has a greater magnitude than said second thickness (fig 6b,7).

As to claims 2 and 8 : Brine et al discloses a metal material (12:44-46).

As to claim 3 : Brine et al discloses a top and bottom portion (fig 6b).

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As to claim 4 : Brine et al discloses a top portion with a first thickness substantially uniform (fig 6b).

As to claim 5 : Brine et al discloses a bottom portion with a first thickness substantially uniform (fig 6b).

As to claim 6 : Brine et al discloses a taper (12:5-10).

As to claim 7 : Brine et al discloses an extrusion process (14:37-39).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuebler et al. Kuebler et al discloses the elements of claim 6, however it fails to clearly disclose the use of a taper. The tapering is a matter of design choice. The specification provides no unexpected results in using a tapering shaft. It would have been obvious to one of ordinary skill in the art to have selected an appropriate taper in order to improve the assembly method used and increase the control of the player.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuebler et al. Kuebler et al discloses the elements of claim 7, however it fails to clearly disclose the method of manufacture. The specification provides no unexpected results in using an extruded shaft. It would have been obvious to one of ordinary skill in the art to have

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selected any one of several equivalent manufacturing means based on cost and production methods.

The following documents may be of interest to the applicant:
4739994;4280727;5951078


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 703-306-5516. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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July 22, 2004


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